

**In the matter of Arbitration between
Teamsters Local 1145 [Lisa Miller] and
Honeywell International**

OPINION AND AWARD

**FMCS Case No. 070110-52745-3
GRIEVANCE ARBITRATION**

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of Teamsters Local 1145
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On behalf of Honeywell International
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JURISDICTION

In accordance with the Collective Bargaining Agreement between Honeywell International, Inc., Minneapolis, Minnesota and Teamsters Local 1145, Industrial Division, effective January 31, 2002; and under the jurisdiction of the United States Federal Mediation and Conciliation Service, Washington, D.C., the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator, on August 16, August 24 and September 27, 2007. Post-Hearing Briefs were filed by the parties on November 5, 2007, and received by the Arbitrator on November 6, 2007. A decision was rendered by the Arbitrator on November 29, 2007.

ISSUE AT IMPASSE

The Union states the issue as:

Whether the employer had just cause to terminate the grievance; if not, what is the appropriate remedy? [Post-Hearing Briefs of Union at 10].

The Company states the issue as:

Was the discharge of Lisa Miller for just cause? If not, what should be the remedy? [Post-Hearing Brief of Honeywell at 1].

The relevant Collective Bargaining Agreement provisions are:

ARTICLE XXI – INSURANCE

Section 7. The Company shall have the exclusive right to discipline, suspend or discharge employees for just cause. In case of a discharge, reasonable notice shall be given to the departmental committee member prior to the discharge. The union agrees a protest of discharge will be barred unless presented in writing under Step 2 of Article XV, Section 2, within five (5) working days after discharge of an employee. The Company agrees to make its final decision within five working days after the written protest is submitted to the Company.

The relevant Company Rules, Policies and Procedures are:

- a. Honeywell's Demerit Policy: Honeywell's disciplinary system utilizes rule-based "demerits", or points. [Union Exhibit No. 4] Various offenses are designated as first, second, third, or fourth-degree demerits. First and second degree demerits result in a written notation in the employee's personnel file; third degree demerits cause a disciplinary lay-off of two to ten days; and a fourth degree demerit can result in discipline up to discharge. Demerits have an active lifespan, during which the merits for new disciplinary incidents can be added to increase demerits to a more serious disciplinary level. Under the Collective Bargaining Agreement, demerits are accumulative. For example, if an employee has two second degree demerit offenses, discipline may be imposed at the fourth degree demerit level. [See Union Exhibit No. 4; see, also, Post-Hearing Brief of Union at 4].
- b. Honeywell has two sections in its Alcohol Policy. Section 1 applies to all hourly employees of the Company. Section 2 applies only to hourly employees who perform, or may be called upon to perform, safety sensitive functions subject to Department of Transportation alcohol testing. Only Section 1 of the alcohol policy is applicable in the instant case and provides, in pertinent part: "no employee may report to work, or work while he or she is affected by alcohol, alone or in combination with any other substance, in any manner detectable by observation and/or by tests". [Union Exhibit No. 3, Section 1; see also Post-Hearing Brief of Union at 4].

FINDINGS OF FACT

1. On August 15, 2006, Lisa Miller, an assembler since 1984 at the Honeywell plant in Golden Valley, Minnesota, since was given a "Notice of Discharge" by Dan Puetz, Operations Leader of the Golden Valley plant. The "Notice of Discharge" stated:

Lisa Miller

Upon completion of an investigation into violations of the rules defined in Company Policy and Procedure 0-1, you are hereby discharged from employment with Honeywell. This discharge is effective immediately.

This discharge is based upon your violation of the following rules and policies:

- Reporting to work under the influence of liquor (3rd degree demerit)

You voluntarily agreed to submit to a breath analysis to determine if you were under the influence of alcohol. The results of this test showed positive for alcohol.

Prior to this most recent incident you were on a 4th degree demerit for violation of the 0-1 policy. That demerit was part of a settlement agreement following your termination for watching television on the production line. These demerits combined result in your termination.

A letter concerning your benefits and other separation data will be sent to your home address from Honeywell's corporate offices.

Dan Puetz

[Employer Exhibit No. 13]

2. On August 14, 2006, Ms. Lisa Miller was working on the assembly line in the Mod IV area of the Honeywell Golden Valley, Minnesota facility. The line was turning out product that failed. Production Engineer Jerry Brooks came to the assembly line to determine the problem. Mr. Brooks has worked at the Golden Valley facility for several years and knows Ms. Lisa Miller and has had interaction with her in the past. After checking the machines on the assembly line and finding nothing wrong, Mr. Brooks spoke with the employees in an attempt to find the problem. Mr. Brooks spoke with Ms. Miller and noticed an odor of alcohol on her breath. Mr. Brooks observed he spoke with Ms. Miller and determined that she might be influenced by alcohol. Mr. Brooks went to Mr. Puetz's office and reported his observations to Mr. Puetz.

Technician, Steve Volk also came to the line to unravel the production problem. Mr. Volk has known Ms. Miller for several years. Mr. Volk spoke with Ms. Miller. Mr. Volk testified that he "smelled the odor of an alcohol" on Ms. Miller's breath when she talked to him. Mr. Volk said that Ms.

Miller's eyes were "glazed and bloodshot". Mr. Volk also testified that Ms. Miller "swayed" when she walked. Mr. Volk also went to Mr. Puetz to tell him that Ms. Miller "had been drinking". Mr. Volk said that Mr. Puetz told him that Mr. Brooks and other employees had already spoken with him about Ms. Miller. Mr. Volk testified that "finding Ms. Miller impaired at work" so surprised him that when he went home that night, he made a point of telling his wife that "someone was drunk at work". [Post-Hearing Brief of Company at 7]. Mr. Brooks and Mr. Volk testified that they noticed an "unusual odor on Ms. Miller's breath" and observed that her eyes appeared "glassy". Mr. Brooks described the odor as "sweet smelling", and thought it was "alcohol". Mr. Volk testified he thought Ms. Miller's walk "was not crisp".

Operations Leader Dan Puetz testified that two of Ms. Miller's co-workers had already reported to him that Ms. Miller had been drinking and may be under the influence of alcohol. Mr. Puetz testified that Mr. Brooks then came to his office and reported his interaction with Ms. Miller and his thoughts that she may be under the influence of alcohol. Mr. Puetz further testified that Mr. Volk next came into his office and told him about his observations of Ms. Miller. Mr. Puetz called Operations Manager Larry Pederson and Human Resources Manager Terry Clapp on the telephone and advised them of the situation. Mr. Puetz told them he was going to check on Ms. Miller and if he found that she had been drinking, he was going to send her for a test. Both concurred. Mr. Puetz then called Supervisor Doug Kettler, and asked him to come to the area as a witness. Mr. Kettler had been Ms. Miller's supervisor in the past and has known her for many years.

Mr. Puetz and Mr. Kettler went to the assembly line and spoke with Ms. Miller. Both confirmed that Ms. Miller had the odor of alcohol on her breath, that her eyes were bloodshot and glassy and that she was unsteady on her feet. Mr. Puetz and Mr. Kettler escorted Ms. Miller to the nurse's office.

While in the nurse's office, Ms. Miller's union stewards were notified and Stewards Vicki Hansen and Pam Reynolds came to the nurse's office. Besides Ms. Miller, others present in the nurse's office were Ms. Reynolds, Ms. Hansen, Ms. Amy Brogan, Mr. Puetz and Mr. Kettler. According to her

testimony, Nurse Jennifer Hastings was also present, but was not in close proximity to Ms. Miller. Ms. Miller was asked if she had anything to drink and she stated she had taken some “Robitussin cough syrup”. [Employer Exhibit No. 15]. Ms. Hansen and Ms. Reynolds did not notice anything unusual about Ms. Miller’s behavior or condition other than she had a severe cough and cold. [Post-Hearing Brief of Union at 6]. They did not believe she was affected by alcohol. [Id.] Nurse Hastings testified that she could not smell any alcoholic beverages on Ms. Miller’s breath, nor did she observe any signs of Ms. Miller being affected by alcohol. [Post-Hearing Brief of Union at 6]. Ms. Miller denied drinking alcohol that day. Ms. Hastings testified at the arbitration hearing that Ms. Miller said she had taken cough medicine that day.

3. Ms. Miller was asked if she would take a breath test. Ms. Miller agreed. Ms. Miller was then sent by taxi to Occupational Medical Consultants for the test. When Ms. Miller arrived at Occupational Medical Consultants, she was given a breath test by Technician Benito Diaz. Mr. Diaz administered the test using an Intoxo Meter AlcoSensor IV breath test device. [ASIV]. The ASIV, manufactured by IntoxoMeters, Inc., is a portable hand-held device, also known as a Portable Breath Test device or PBT. It is designed to screen for the presence of alcohol, but not necessarily to precisely measure the amount of alcohol in the breath. It is used by police officers as a preliminary screening device. Thomas Burr, who testified on behalf of the Union and Ms. Miller at the arbitration hearing, is an expert in Forensic Toxicology. Mr. Burr testified that the ASIV is not an evidentiary test to show or prove alcohol concentration or that the subject is, in fact, under the influence of alcohol. Rather it is a gross measure of the presence of breath alcohol. [Post-Hearing Brief of Union at 8]. The ASIV utilizes an electro chemical sensor or fuel cell to detect alcohol compounds present in a breath sample. Mr. Burr testified because the ASIV has no slope detector or other mouth alcohol detection system, it lacks the necessary safeguards to prevent a false reading due to the presence of mouth alcohol. [Post-Hearing Brief of Union at 8].

4. Technician Benito Diaz, an employee of Occupational Medical Consultants and the person who administered the ASIV test to Ms. Miller, testified that he observed Ms. Miller prior to the test and she exhibited signs of being under the influence of alcohol. Mr. Diaz stated that Ms. Miller had: 1) the odor of alcoholic beverage on her breath; 2) bloodshot eyes; and 3) a flushed face. Mr. Diaz administered the ASIV test at 10:40 a.m. with readings of .08. [Employer Exhibit No. 16]. Mr. Diaz then waited 16 minutes with Ms. Miller to perform a second test. During this time, Mr. Diaz observed Ms. Miller and did not see her put anything in her mouth or witness any type of unusual behavior from Ms. Miller. Mr. Diaz administered the second breath test to Ms. Miller at 10:56 a.m. The results were .066. Mr. Diaz testified the breath test device functioned properly and the result of the test corresponded with his observations of Ms. Miller. Mr. Diaz later provided the calibration record of the test device. [Employer Exhibit No. 17]. Once the test was administered, Ms. Miller was sent by taxi back to the Honeywell Golden Valley facility.

Mr. Burr, on behalf of the Union and Ms. Miller, testified that because the ASIV has no slope detector or other mouth alcohol detector, it lacks the necessary safeguards to present a false reading due to the presence of mouth alcohol, and therefore its results can be unreliable when mouth alcohol is present or if the subject has an illness such as Gastro Esophageal Reflux Disease (GERD), which Ms. Miller has. Mr. Burr testified that mouth alcohol invalidates a PBT test--which the ASIV instrument is--because it introduces alcohol into the test from a source outside of the lungs i.e. the stomach from belching. A PBT is not designed to recognize such "mouth alcohol" therefore resulting in the possibility of an artificially high reading. Mr. Burr explained that PBT's can also read many substances that are not alcohol, such as sugars, propylene, glycol and any chemical within a functional alcohol group (not just mouth alcohol),. All can register a positive but incorrect high reading. Mr. Burr testified this can include thickening or flavoring agents known as glycoside contained in cough medications. [See Union Post-Hearing Brief at 8, see also Union Exhibits 19A and 19B]. It can also register alcohol compounds frequently used in baked goods, soft drinks, mints and other candies. [Union Post-Hearing Brief at 8].

Mr. Burr testified that because of this potential for false positives, a positive PBT, i.e. ASIV, result should always be confirmed with a qualified evidentiary test, such as a blood or urine alcohol test, or a more sophisticated breath analyzer test. [Id.] For such evidence to stand up in a court of law such a confirming test must be done.

Mr. Burr further explained that the test records of the specific ASIV machine used to test Ms. Miller showed large gaps in time between the calibration tests and does not suggest a regular schedule of maintenance. Mr. Burr also testified that the ASIV did not show that a calibration test was run at any recent time prior to Ms. Miller's test, and does not explain why the ASIV machine was calibrated after Ms. Miller's test.

4. On August 16, when Ms. Miller reported to work, Mr. Puetz called her and her union representative into his office. Ms. Miller was discharged and given a copy of her discharge letter. [See Finding of Fact No. 1, Employer Exhibit No. 13]. The Union filed a grievance dated August 17, 2006 on behalf of Ms. Miller. [Employer Exhibit No. 14]. The grievance stated, in applicable part, "the Union disagrees with discharge of Lisa. Co. is in violation of Art. XIX, Section 7". [Id.]. It further stated "reinstate with full benefits and back pay at the appropriate rate. Back pay for 8/14/06 partial day". [Id.].

At the August 16, 2007 meeting when Ms. Miller was discharged, the Union representatives contended that the odor of an alcoholic beverage the witnesses observed was only Ms. Miller's perfume. [Company Post-Hearing Brief at 9]. During the discussions, Mr. Chuck Benson, Attorney at Law and Labor Relations Manager, spoke with Union Stewards Gary Dahlheimer, Tom Grabinski and Pam Reynolds concerning the grievance. The stewards were told that Robitussin cough syrup does not contain alcohol. The grievance progressed through the steps outlined in the grievance procedure until it reached the instant arbitration hearing. At the arbitration hearing, Ms. Miller testified that she had taken "Vicks Formula 44D" cough syrup, a cough syrup with alcohol content, not the "Robitussin" as she had originally stated.

5. Dr. Thomas Jetzer, M.D., a Member and Diplomat of the American Board of Occupational Medicine and the owner of the clinic where the ASIV test was administered, testified that cough syrup is a liquid that is specifically designed to be quickly absorbed by the human body. Dr. Jetzer testified that since Ms. Miller testified that she took cough syrup before coming to work at 6 a.m., the morning of August 14, 2006; and that the breath tests were not administered until 10:40 and 10:56 a.m. respectively; then any cough syrup Ms. Miller might have taken would have gone from Ms. Miller's stomach and could not have affected the results. Mr. Burr testified on cross-examination that even though he basically disagreed with the breath tests procedures [i.e. the ASIV test] involved in this case, he acknowledged "there is alcohol here somewhere that is being measured". [Post-Hearing Brief of Company at 14].

6. Ms. Miller has been disciplined many times. [Employer Exhibit No. 1]. During her 22 years employment with Honeywell she has received over 40 disciplines for time and attendance issues and three disciplines for performance issues. [Id.]. In addition, Ms. Miller has been discharged three times prior to the instant matter of August 14, 2006.

Ms. Miller's first discharge was for excessive absenteeism in April 2003. The Union filed a grievance over the discharge and Ms. Miller was reinstated by an arbitrator. [Employer Exhibit No. 8]. During that first arbitration hearing, Ms. Miller stated she was an alcoholic and cited her abuse of alcohol as the reason for her absences. [Id.]. In reinstating Ms. Miller, Arbitrator Bellman wrote:

The Arbitrator, considering the record as a whole, and especially the testimony of the Grievant in which she promised to address her alcoholism and make every effort to be a productive and reliable worker, concludes that there is just cause for discipline, but not for discharge; and would reinstate the Grievant, without back pay, and in fourth-degree demerit status, under the conditions specified in the Award below. Meeting these conditions is solely the responsibility of the Grievant.

The Grievant shall be reinstated immediately to her former position, or a substantially equivalent position; and placed in a fourth-degree demerit status; on the condition that she must (1) continue all current assessment, treatment and other alcohol-abuse programs until they are completed, (2) report regularly to such Company officials as the Company designates regarding her participation in such programs, and (3) provide Company Human resources and Employee Assistance

Program officials with such releases as will allow inquiry regarding her participation in such programs; and such documents as they request regarding her completion of any program. [Id.]

Ms. Miller's second discharge came in February of 2004. [Employer Exhibits 1 and 9]. This discharge was also for excessive absenteeism. The Union again filed a grievance over the discharge. Ms. Miller again claimed to be an alcoholic and she was reinstated pursuant to a Company/Union agreement. [Id.]. The agreement stated:

She will be reinstated on a 4th degree demerit which will expire on 02/28/05. All time off will be served as a Disciplinary Suspension. She is currently at 67 hours of lost time. This entry and Lisa's arbitration Award B-23 was reviewed with her. Her condition of employment, Lisa must comply with all conditions of this entry and arbitration Award B-23. Lisa is to provide Labor Relations by 03/17/04 all the documentation stated in the arbitration award. [Post-Hearing Brief of Union at 5].

Ms. Miller's third discharge came in September 2005. [Employer Exhibit No. 1]. Ms. Miller's Supervisor, Dan Puetz, testified he saw that all four coil winder machines Ms. Miller was supposed to be operating had stopped. Mr. Puetz walked to Ms. Miller's bench to ask her why they were stopped. He saw that Ms. Miller watching a small hand-held television. She was discharged for misconduct, specifically "deliberate loafing" and "for carrying on unauthorized activity during working hours". Ms. Miller was again reinstated pursuant to a Company/Union settlement agreement. [Employer Exhibit No. 10]. The settlement agreement stated:

Effective upon reinstatement, Ms. Miller is expected to maintain acceptable performance for a period of 12 months and to strictly follow all of the Company's policies. If Ms. Miller *fails* to maintain acceptable performance within the twelve (12) months period, then the Company shall have the right within its sole discretion to terminate her employment for violating the terms and conditions of this settlement agreement. [Post-Hearing Brief of Company at 6, emphasis in original].

After Ms. Miller returned to work she was given a written warning on April 11, 2006 and a second written warning on April 24, 2006 over her continued pattern of poor on-time and attendance. [Employer Exhibit No. 11]. On April 28, 2006 Ms. Miller was given a three-day suspension for excessive absences. [Employer Exhibit No. 12]. Mr. Puetz testified he did not discharge Ms. Miller

under the terms of the settlement agreement because the Company had instituted the new Time and Attendance Policy, separating time and attendance matters from other misconduct. [Id.]

7. The basic contentions of the Company are:

a. Ms. Miller was discharged for just cause for violating the terms of her settlement agreement and for violating the Company's alcohol policy. Several people found Ms. Miller to be "affected by alcohol" while she was working.

b. Ms. Miller was found at work impaired by alcohol in violation of the Company's alcohol policy and the terms of her settlement agreement.

c. Minnesota Statutes and Criminal Testing Procedures are not the standard in the Honeywell Alcohol Policy. This arbitration hearing is not a criminal court; it is the product of the parties Labor Agreement. Ms. Miller was discharged under the Company's policies, not the state law nor the state testing procedures used to convict persons of "Driving While Under the Influence" offences. Ms. Miller was discharged twice for time and attendance issues. Both times, Ms. Miller was returned to work because she claimed she was an alcoholic and her alcoholism caused her to have problems. Ms. Miller's third discharge was for watching television when she was supposed to be working. She was returned under a grievance settlement in October 2005. Ms. Miller voluntarily admitted her violation and acknowledged that if she "*fails* to maintain acceptable performance within the twelve (12) month period, then the Company shall have the right within its sole discretion to terminate her employment for violating the terms and conditions of this settlement agreement" [Post-Hearing Brief of Company at 6, emphasis in original].

d. On August 14, 2006, seven people who have known Ms. Miller for years found her to be impaired by alcohol while she was working on the Mod IV assembly line.

e. During the grievance step procedures, Ms. Miller's claim was that the smell was due to her perfume. Not until the arbitration hearing was Ms. Miller's GERD/Acid Reflux Disease raised. The argument is the Union's attempt to discredit the breath test. Even without the breath test

result, the seven witnesses who testified to Ms. Miller's impaired state are ample cause to support her discharge.

f. While the Company is sensitive to Ms. Miller's alcoholism, it has met any obligation it may have had to her in this regard. Ms. Miller has been discharged and reinstated three times. The Union is asking this arbitrator to once again provide her another chance. Ms. Miller has completely depleted the reservoir of good will she built up with the Company over the years. She has been provided multiple opportunities to retain the security of a job as she worked through her problems with alcohol. Each time Ms. Miller has failed the Company. And more importantly, she has failed herself. She has demonstrated time and again that she is unwilling to adhere to the reasonable requirements that the Company expects of all employees and that the Union and Company agreed in the settlement agreement. It would be unduly burdensome and an impediment to the Company's legitimate business interest to provide Ms. Miller with any more opportunities than she has already been given. The Company can no longer afford to keep trying to help Ms. Miller under these circumstances. [See generally Post-Hearing Brief of Company at 10-21].

8. The basic contentions of the Union are:

a. The Employer did not have just cause to terminate Ms. Miller. The Employer bears a heavy burden of proving just cause to terminate. The Employer did an inadequate investigation. The Company did not show that Ms. Miller was, in fact, "affected by alcohol" as stated in Honeywell's alcohol policy. Instead, the Company chose to rely upon the random, subjective and unsubstantiated observations of untrained personnel who are not tasked to conduct any such investigation.

b. The Company sent Ms. Miller to a testing facility that failed to follow standard evidentiary testing protocols, failed to properly administer the ASIV test, and failed to perform a confirming evidentiary test, therefore rendering the test results inconclusive and unreliable to determine even the presence of alcohol much less that Ms. Miller was "affected by alcohol".

c. The ASIV is a screening device, not evidence of alcohol concentration. Having the smell of alcoholic beverages on one's breath does not equate with being "affected by alcohol". Basically, all the employer has proven is that Ms. Miller exhibited some symptoms on August 14, 2006 that are sometimes equated with having consumed alcohol. Consuming alcohol, under any definition, is not the equivalent of being "affected by alcohol".

d. The ASIV test in this matter was invalid. The device was not calibrated for accuracy; the test was improperly administered; there was potential mouth alcohol contamination because of the taking of a cough syrup; and Dr. Jetzer's testimony should be disregarded because Dr. Jetzer is not a Forensic Toxicologist capable of testifying about Ms. Miller's condition on the day of the incident. Rather, Dr. Jetzer is the owner of the testing clinic.

e. There is no documentation that exists to indicate that the ASIV used on Ms. Miller was regularly checked for accuracy. An examination of the test record reveals only that the last accuracy check was performed on the ASIV on May 31, 2006, more than two months prior to Ms. Miller's testing, and there is no record of any calibration of the ASIV prior to the test on Ms. Miller.

f. The punishment of discharge is too severe. Ms. Miller has 22 years of service at Honeywell. Her lengthy service for the employer should operate in a grievance in her favor when a discharge is reviewed through arbitration. This single act of being "affected by alcohol", even if proven, is insufficient grounds to ignore the lengthy tenure and loyalty of the employee. [See generally Post-Hearing Brief of Union at 10-24].

DECISION AND RATIONALE

There are two reasons the Company gives for the discharge of Ms. Miller. First, Ms. Miller had been reinstated from her third discharge and was on a 4th degree demerit with the specific understanding that she must follow Company rules and policies. Second, on August 14, 2006 she was found to be at work impaired/influenced by alcohol. [Post-Hearing Brief of Company at 21]. Seven witnesses confirmed by their own observations that her "eyes looked glassy"; she had "bloodshot eyes"; she had

the “odor of alcohol”; she had an “unsteady walk”; and, she was “definitely unstable”. The preliminary breath test, i.e., the ASIV test, confirmed in two separate tests given 16 minutes apart that she blew tests of .08 and .066 breath alcohol.

It is strongly contested by the Union that the ASIV is a simply preliminary test and would never stand up alone in a court to prove that a driver of a vehicle was driving under the influence of alcohol. Also the Union argues the ASIV test can be influenced by mouth alcohol as a result of Ms. Miller’s Acid Reflux disease (GERD). The possibility of “belching” some of the alcohol-laden cough syrup and the poor calibration record of the instrument show that the ASIV tests results should not be consider by this Arbitrator, contends the Union.

But the observations of seven independent witnesses cannot be disputed. If this was the first time that Ms. Miller was being discharged, the arguments would have greater weight and perhaps her credibility would be higher. But this is the fourth time Ms. Miller has faced discharge, two of which she used her alcoholism as a defense. Ms. Miller was given a second chance in the 2003 Arbitration when Arbitrator Bellman reinstated her. She was given a third chance in 2004 when she was reinstated through a Company/Union settlement. She was given a fourth chance in 2005 when she was reinstated, again through a Company/Union settlement.

Arbitrator Stephen Befort in a recent award involving another Honeywell employee upheld the discharge of the employee with alcohol issues. *Honeywell International v. Teamsters Local 1145*, FMCS Case No. 060517-56317-7. The employee had been reinstated under a settlement agreement from a previous discharge after he claimed he was an alcoholic. The employee was arrested for Driving While Under the Influence (DWI) and put in a halfway house. The employee later failed a breath test at the halfway house which caused him to be put in jail and miss work. The employee was then terminated. In upholding this discharge, Arbitrator Befort wrote:

Most significantly, this is not a case where the Employer has failed to provide the grievant with a second chance to overcome his problem. The employer in this matter has provided [the employee] three “second’ chances to overcome his alcohol

and attendance problems. The Employer on three occasions has rescinded discharge decisions and agreed with the Union to permit [the employee] to substitute treatment and progressive discipline as a potential means for him to retain employment. The desired objective in each instance, of course, was to correct the employee's behavior. But, each effort has proven to be unsuccessful. Where repeated attempts at progressive discipline and treatment have proven to be fruitless in correcting behavior, the Employer has just cause to terminate the employment relationship. [See Post-Hearing Brief of Company at 18].

It is true that Ms. Miller has 22 years of service at Honeywell and the Company and the Union have repeatedly worked with Ms. Miller to help her keep her job. Ms. Miller has been discharged and reinstated three different times during her 22 years of employment. She has many disciplines in her personnel file. As far as the Company is concerned "Ms. Miller has completely depleted the reservoir of goodwill she built up with the Company over the years. She has been provided multiple opportunities to retain the security of a job as she worked through her problems with alcohol." [Post-Hearing Brief of Company at 21]. The Company is no longer willing to work with Ms. Miller. The Company has a legitimate business interest in refusing to provide Ms. Miller with any more opportunities than she has already been given. Ms. Miller was "affected by alcohol" at work on August 14, 2006 in violation of the Honeywell Alcohol Policy. Whether she was "affected by alcohol because of the cough syrup [perhaps she drank too much of it] or because of drinking an alcoholic beverage, it does not erase the reality that she was being "affected by alcohol" on that day at work. Seven of her co-workers saw the "affects" the alcohol had on her body and on her abilities. The Union's contentions that the ASIV test is a preliminary test, was not calibrated correctly, and, the "mouth alcohol" problems inherent in the ASIV test are irrelevant to the realities Ms. Miller displayed to her co-workers that day. They observed her "affected by alcohol" while at work.

Based on: (1) the observations of seven different employees that Ms. Miller was "affected by alcohol" in the work place; (2) the preliminary breath test results of .08 and .066--albeit preliminary and not dispositive; (3) Ms. Miller's lack of credibility that all of the observable affects of alcohol were caused by the taking of a cough syrup; and, (4) her past disciplinary record, it is held that just cause has

been proven by a preponderance of the evidence to uphold the termination. The grievance is denied.

Honeywell's termination of Ms. Lisa Miller is upheld. Just cause exists for the termination.

Dated: November 29, 2007.

Joseph L. Daly
Arbitrator